

# Senate File 114 - Introduced

SENATE FILE 114

BY ZAUN

## A BILL FOR

1 An Act relating to the review of administrative rules and the  
2 rulemaking process and including effective date provisions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 7.17, Code 2015, is amended to read as  
2 follows:

3 **7.17 Office of administrative rules coordinator.**

4 1. The governor shall establish the office of the  
5 administrative rules coordinator, and appoint its staff, which  
6 shall be a part of the governor's office.

7 2. The administrative rules coordinator shall receive all  
8 notices and rules adopted pursuant to chapter 17A and provide  
9 the governor with an opportunity to review and object to any  
10 rule as provided in chapter 17A.

11 3. a. The administrative rules coordinator shall create a  
12 citizens' committee, consisting of regulators, stakeholders,  
13 members of the public, and legislators, to advise the  
14 administrative rules coordinator on rulemaking issues.

15 b. The members of the committee shall not be paid a per diem  
16 but shall be reimbursed for travel expenses.

17 Sec. 2. Section 17A.4, subsection 1, paragraph b, Code 2015,  
18 is amended to read as follows:

19 b. (1) Afford all interested persons not less than twenty  
20 days to submit data, views, or arguments in writing, including  
21 in an electronic format. If timely requested in writing by  
22 twenty-five interested persons, by a governmental subdivision,  
23 by the administrative rules review committee, by an agency, or  
24 by an association having not less than twenty-five members, the  
25 agency must give interested persons an opportunity to make oral  
26 presentation.

27 (2) To the extent practicable, the agency shall provide an  
28 opportunity to make these oral presentations using the Iowa  
29 communications network or other electronic means and provide  
30 public access at multiple sites throughout the state. If  
31 a request is received from twenty-five interested persons  
32 residing in the same city or county, the agency shall provide  
33 an opportunity for oral presentation in that city or county.

34 (3) The opportunity for oral presentation must be held  
35 at least twenty days after publication of the notice of its

1 time and place in the Iowa administrative bulletin. The  
 2 agency shall consider fully all written and oral submissions  
 3 respecting the proposed rule. Within one hundred eighty  
 4 days following either the notice published according to the  
 5 provisions of paragraph "a" or within one hundred eighty  
 6 days after the last date of the oral presentations on the  
 7 proposed rule, whichever is later, the agency shall adopt a  
 8 rule pursuant to the rulemaking proceeding or shall terminate  
 9 the proceeding by publishing notice of termination in the Iowa  
 10 administrative bulletin.

11 Sec. 3. Section 17A.4, subsection 2, Code 2015, is amended  
 12 to read as follows:

13 2. An agency shall include in a preamble to each rule  
 14 it adopts ~~a brief explanation of the principal reasons for~~  
 15 ~~its action pursuant to section 17A.5 a concise statement~~  
 16 of the principal reasons for and against the rule adopted,  
 17 incorporating in the statement the reasons for overruling  
 18 considerations urged against the rule and, if applicable, a  
 19 brief explanation of the principal reasons for its failure  
 20 to provide in ~~that~~ the rule for the waiver of the rule in  
 21 specified situations if no such waiver provision is included  
 22 in the rule. ~~This explanatory requirement does not apply when~~  
 23 ~~the agency adopts a rule that only defines the meaning of a~~  
 24 ~~provision of law if the agency does not possess delegated~~  
 25 ~~authority to bind the courts to any extent with its definition.~~  
 26 ~~In addition, if requested to do so by an interested person,~~  
 27 ~~either prior to adoption or within thirty days thereafter, the~~  
 28 ~~agency shall issue a concise statement of the principal reasons~~  
 29 ~~for and against the rule adopted, incorporating therein the~~  
 30 ~~reasons for overruling considerations urged against the rule.~~  
 31 ~~This concise statement shall be issued either at the time of~~  
 32 ~~the adoption of the rule or within thirty-five days after the~~  
 33 ~~agency receives the request.~~

34 Sec. 4. NEW SECTION. 17A.4B Job impact statement.

35 1. a. "*Benefit*" means the reasonably identifiable and

1 quantifiable positive effect or outcome that is expected to  
2 result from implementation of a rule.

3     *b. "Cost"* means reasonably identifiable, significant, direct  
4 or indirect, economic impact that is expected to result from  
5 implementation of and compliance with a rule.

6     *c. "Cost-benefit analysis"* means regulatory analysis  
7 to provide the public with transparency regarding the  
8 cost-effectiveness of a rule, including the economic costs  
9 and benefits and the effectiveness weighed by the agency  
10 in adopting the rule. *"Cost-benefit analysis"* includes a  
11 comparison of the probable costs and benefits of a rule to the  
12 probable costs and benefits of less intrusive or less expensive  
13 methods that exist for achieving the purpose of the rule.

14     *d. "Jobs"* means private sector employment including  
15 self-employment and areas for potential for employment growth.

16     *e. "Jobs impact statement"* means a statement that does all  
17 of the following:

18         (1) Identifies the purpose of a rule and the applicable  
19 section of the statute that provides specific legal authority  
20 for the agency to adopt the rule.

21         (2) Identifies and describes the cost that the agency  
22 anticipates state agencies, local governments, the public, and  
23 the regulated entities, including regulated businesses and  
24 self-employed individuals, will incur due to implementing and  
25 complying with a rule.

26         (3) Determines whether a rule would have a positive  
27 or negative impact on private sector jobs and employment  
28 opportunities in Iowa.

29         (4) Describes and quantifies the nature of the impact a rule  
30 will have on private sector jobs and employment opportunities  
31 including the categories of jobs and employment opportunities  
32 that are affected by the rule, and the number of jobs or  
33 potential job opportunities and the regions of the state  
34 affected by the rule.

35         (5) Identifies, where possible, the additional costs to

1 employers per employee due to implementing and complying with  
2 a rule.

3 (6) Includes other relevant analysis requested by the  
4 administrative rules coordinator.

5 2. Prior to implementation of a rule, an agency shall  
6 take steps to minimize the adverse impact on jobs and  
7 the development of new employment opportunities due to  
8 implementation of the rule.

9 3. An agency shall provide a jobs impact statement to the  
10 administrative rules coordinator prior to publication of a  
11 notice of intended action or the publication of a rule without  
12 notice.

13 4. The jobs impact statement shall be published as part  
14 of the preamble to the notice of rulemaking in the Iowa  
15 administrative bulletin, unless the administrative rules  
16 coordinator determines that publication of the entire jobs  
17 impact statement would be unnecessary or impractical.

18 5. An agency shall accept comments and information  
19 from stakeholders prior to final preparation of the jobs  
20 impact statement. Any concerned private sector employer or  
21 self-employed individual, potential employer, potential small  
22 business, or member of the public may submit information  
23 relating to a jobs impact statement upon a request for  
24 information or prior to publication of a notice of intended  
25 action or publication of a rule without notice by an agency.

26 6. If a jobs impact statement is revised after a notice  
27 of intended action or a rule without notice is published, the  
28 revised jobs impact statement shall be published as part of  
29 the preamble to the adopted version of the rule, unless the  
30 administrative rules coordinator determines that publication  
31 of the entire jobs impact statement would be unnecessary or  
32 impractical.

33 7. The analysis in the jobs impact statement shall give  
34 particular weight to jobs in production sectors of the economy  
35 which includes the manufacturing and agricultural sectors of

1 the economy and shall include analysis, where applicable, of  
2 the impact of the rule on expansion of existing businesses or  
3 facilities.

4 8. The administrative rules coordinator may waive the jobs  
5 impact statement requirement for rules proposed on an emergency  
6 basis or if unnecessary or impractical.

7 9. By July 1, 2016, and every five years thereafter, an  
8 agency shall prepare a comprehensive jobs impact statement  
9 for all of the agency's rules. An agency shall transmit  
10 each five-year comprehensive jobs impact statement to the  
11 administrative rules coordinator, the administrative rules  
12 review committee, and the administrative code editor. The  
13 administrative code editor shall publish the statement, or a  
14 summary, in the Iowa administrative bulletin.

15 Sec. 5. NEW SECTION. 17A.4C **Negotiated rulemaking.**

16 1. An agency shall create a negotiated rulemaking group if  
17 required by statute. An agency may, on its own motion or upon  
18 request, create a negotiated rulemaking group if the agency  
19 determines that a negotiated rulemaking group can adequately  
20 represent the interests that will be significantly affected by  
21 a draft rule proposal and that it is feasible and appropriate  
22 in the particular rulemaking. Notice of the creation of a  
23 negotiated rulemaking group shall be published in the Iowa  
24 administrative bulletin. Upon establishing a negotiated  
25 rulemaking group, the agency shall also specify a time frame  
26 for group deliberations.

27 2. Unless otherwise provided by statute, the agency shall  
28 appoint a sufficient number of members to the group so that  
29 a fair cross section of interests and opinions regarding the  
30 draft rule proposal is represented. One person shall be  
31 appointed to represent the agency. The group shall select its  
32 own chairperson and adopt its rules of procedure. All meetings  
33 of the group shall be open to the public. A majority of the  
34 membership constitutes a quorum. Members shall not receive  
35 any per diem payment but shall be reimbursed for all necessary

1 expenses. Any vacancy shall be filled in the same manner as  
2 the initial appointment.

3 3. Prior to the publication of a notice of intended action,  
4 the group shall consider the terms or substance of the rule  
5 proposed by the agency and shall attempt to reach a consensus  
6 on the advisability of adopting the draft rule proposal.

7 4. If a group reaches a consensus on a draft rule proposal,  
8 the group shall transmit to the agency a report containing the  
9 consensus on the draft rule proposal. If the group does not  
10 reach a consensus on a draft rule proposal within the specified  
11 time frame, the group shall transmit to the agency a report  
12 stating that inability to reach a consensus and specifying any  
13 areas in which the group reached a consensus. The group may  
14 include in a report any other information, recommendations,  
15 or materials that the group considers appropriate. Any group  
16 member may include as an addendum to the report additional  
17 information, recommendations, or materials. A report issued  
18 under this subsection shall not be considered final agency  
19 action for purposes of judicial review.

20 5. Unless otherwise provided by statute, following  
21 consideration of a draft rule proposal by a negotiated  
22 rulemaking group, the agency may commence rulemaking as  
23 provided in section 17A.4. The group is automatically  
24 abolished upon the agency's adoption of the rule pursuant to  
25 the provisions of section 17A.5.

26 Sec. 6. Section 17A.7, subsection 2, Code 2015, is amended  
27 to read as follows:

28 2. Beginning July 1, 2012, over each five-year period of  
29 time, an agency shall conduct an ongoing and comprehensive  
30 review of all of the agency's rules. The goal of the review  
31 is the identification and elimination of all rules of the  
32 agency that are outdated, redundant, ~~or~~ overbroad, ineffective,  
33 unnecessary, inconsistent or incompatible with statute or its  
34 own rules or those of other agencies, or otherwise undesirable.  
35 An agency shall commence its review by developing a plan of

1 review in consultation with major stakeholders and constituent  
2 groups. As part of its review, an agency shall review existing  
3 policy and interpretive statements or similar documents to  
4 determine whether it would be necessary or appropriate to adopt  
5 these statements or documents as rules.

6 a. An agency shall establish its five-year plan for review  
7 of its rules and publish the plan in the Iowa administrative  
8 bulletin.

9 b. An agency's plan for review shall do all of the  
10 following:

11 (1) Contain a schedule that lists when the review of each  
12 rule or rule group will occur.

13 (2) State the method by which the agency will analyze  
14 the rule under review regarding the considerations listed in  
15 paragraph "c".

16 (3) Provide a means for public participation in the review  
17 process and specify how interested persons may participate in  
18 the review.

19 (4) Identify instances where the agency may require an  
20 exception to the review requirements.

21 (5) Provide a process for ongoing review of rules after the  
22 initial five-year review period has expired.

23 c. An agency shall analyze its rules under review by  
24 considering all of the following:

25 (1) The need for the rule.

26 (2) The clarity of the rule.

27 (3) The intent and legal authority for the rule.

28 (4) The qualitative and quantitative benefits and costs of  
29 the rule.

30 (5) The fairness of the rule.

31 d. When the agency completes the five-year review of the  
32 agency's own rules, the agency shall provide a summary of  
33 the results to the administrative rules coordinator and the  
34 administrative rules review committee.

35 **Sec. 7. NEW SECTION. 17A.24 Rule implementation of federal**

1 statute, regulation, or policy.

2 1. Except as otherwise explicitly authorized by state law,  
3 an agency charged with the implementation of a federal statute,  
4 regulation, or policy shall not implement the federal statute,  
5 regulation, or policy in a manner that exceeds the specific  
6 requirements of the federal statute, regulation, or policy.

7 2. Any portion of an agency rule or policy that implements  
8 a federal statute, regulation, or policy and that exceeds the  
9 specific requirements of the federal statute, regulation, or  
10 policy is automatically superseded by the specific requirements  
11 of that federal statute, regulation, or policy.

12 Sec. 8. ENVIRONMENTAL REGULATION STUDY.

13 1. The legislative council, in consultation with the  
14 department of natural resources, shall establish a study to  
15 analyze the projected financial effects of current and proposed  
16 United States environmental protection agency regulations and  
17 Iowa department of natural resources rules on Iowa cities over  
18 a ten-year period.

19 2. The study should include an analysis of projected  
20 financial costs of such regulations and rules on a hypothetical  
21 small Iowa community, medium-sized Iowa community, and large  
22 Iowa community.

23 3. The study shall be concluded by June 30, 2016, and a  
24 report shall be provided to the members of the general assembly  
25 and to the governor.

26 Sec. 9. EFFECTIVE DATE. The section of this Act amending  
27 section 17A.7, subsection 2, takes effect July 1, 2017.

28 EXPLANATION

29 The inclusion of this explanation does not constitute agreement with  
30 the explanation's substance by the members of the general assembly.

31 This bill relates to the review of administrative rules and  
32 the rulemaking process.

33 CITIZENS' ADVISORY COMMITTEE. The bill requires that the  
34 administrative rules coordinator create a citizens' committee,  
35 to advise the administrative rules coordinator on rulemaking

1 issues. The members of the committee shall not be paid a per  
2 diem but shall be reimbursed for travel expenses.

3 RULEMAKING HEARINGS THROUGHOUT STATE. The bill requires  
4 administrative agencies, to the extent practicable, to hold  
5 rulemaking hearings in varied locations throughout the state  
6 via the Iowa communications network or other electronic means  
7 and provides that a hearing must be held in a particular city  
8 or county when 25 interested persons from that city or county  
9 make the request.

10 PRINCIPAL REASONS FOR AND AGAINST RULE. The bill requires  
11 that every adopted rule must be accompanied by a concise  
12 statement of the principal reasons for and against the rule  
13 adopted. Under current law such a statement is only provided  
14 on request.

15 JOBS IMPACT STATEMENTS. The bill requires that every  
16 proposed rule under a notice of intended action or publication  
17 without notice contain a jobs impact statement which outlines  
18 the purpose and statutory authority of the rule and analyzes  
19 and sets out in detail the impact of the proposed rule on state  
20 agencies, local governments, the public, and the regulated  
21 entities, including regulated businesses and self-employed  
22 individuals affected by the rule. The statement must also  
23 determine whether a proposed rule would have a positive  
24 or negative impact on private sector jobs and employment  
25 opportunities.

26 Commencing July 1, 2016, and every five years thereafter,  
27 each agency shall prepare a jobs impact statement for all of  
28 the agency's rules. The statement must be published in the  
29 Iowa administrative bulletin.

30 As part of this requirement, an agency is required to  
31 take steps to minimize the adverse impact on jobs and the  
32 development of new employment opportunities before proposing  
33 a rule.

34 The administrative rules coordinator may waive the jobs  
35 impact statement requirement for emergency-filed rules or if

1 unnecessary or impractical.

2       NEGOTIATED RULEMAKING GROUPS. If required by statute,  
3 this bill requires an agency to create an ad hoc negotiated  
4 rulemaking group to review draft rule proposals prior to  
5 commencing a rulemaking proceeding. Where a statute does not  
6 require this review, the bill allows an agency to create such  
7 a review group. Members are appointed by the agency and the  
8 composition must adequately represent a fair cross section of  
9 interests and opinions regarding the rule. Once such a group  
10 is created, the agency may only commence rulemaking after the  
11 group has considered the draft rule proposal in question. This  
12 provision is based on similar provisions found in the federal  
13 Administrative Procedures Act.

14       FIVE-YEAR CYCLE OF AGENCY REVIEW OF RULES. Current  
15 law requires that each state agency review all of its  
16 administrative rules on a five-year cycle. The bill provides  
17 additional procedures and criteria for such reviews.

18       FEDERAL LAW IMPLEMENTATION. The bill also provides that  
19 state implementation of a federal statute, regulation,  
20 or policy by a state agency shall not exceed the specific  
21 requirements of the federal statute, regulation, or  
22 policy, except as specifically allowed by state law. Any  
23 portion of a state rule or policy that implements a federal  
24 statute, regulation, or policy and that exceeds the specific  
25 requirements of the federal statute, regulation, or policy is  
26 automatically superseded by the specific requirements of that  
27 federal statute, regulation, or policy.

28       ENVIRONMENTAL RULES STUDY. The bill provides that the  
29 legislative council, in consultation with the department of  
30 natural resources, shall establish a study to analyze the  
31 projected financial effects of current and proposed United  
32 States environmental protection agency regulations and Iowa  
33 department of natural resources rules on Iowa cities over a  
34 10-year period. The report of the study must be completed by  
35 June 30, 2016.

1      EFFECTIVE DATE. The provision of the bill relating to state  
2 agency review of administrative rules on a five-year cycle  
3 takes effect July 1, 2017.